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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 268

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, ETC., ET AL.

Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD

Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

TEDDY W. AIRHART, JR.
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ATTORNEYS FOR PETITIONER

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Petitioner prays that this Court grant a rehearing of it's Order of October 10, 1966, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit in the above entitled case as prayed for in the petition, filed June 20, 1966.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Under the provisions of section 10 (e) of the National Labor Relations Act, as amended (29 U.S.C. 151, et seq.) counsel for petitioner respectfully submits that he is entitled to a rehearing to adduce additional evidence. A reasonable ground for petitioner's failure to produce pertinent evidence in the March 25th hearing has been shown to be his reliance on a telephone call petitioner received from Mr. Walter Sheridan of the United States Department of Justice, notifying petitioner that the hearing was to be cancelled. (See Appendix "C" to printed record). Relying on this call, counsel for petitioner did not show up for the hearing which he justifiably felt had been cancelled.

A refusal to allow petitioner to call witnesses in his behalf, and participate in the hearing is a violation of the fundamental principles inherent in due process of law. As was stated by the Court in the case of NLRB v. Prettyman, 117 Fed.2d 786, 790:

> "An employer is entitled to a hearing of and decision on the charges against him according to the fundamental principles that inhere in due process of law, and indispensable requisities of such hearings are that the course of proceedings shall be appropriate to the case and just to the employer, that he shall be notified of charges in time to meet them and shall have an opportunity to be heard and cross-examine the witnesses against him and shall have time and opportunity at a convenient place, after the evidence against him is produced and known to him to produce evidence and witnesses to refute the charges, and that the decision of the Board shall be governed by and based upon the evidence produced at the hearing."

Petitioner has shown reasonable grounds for believing that the hearing of March 25, had been cancelled and should thus be allowed a chance to present his evidence as a matter of due process of law. See also Mississippi Valley Structural Co. v. NLRB, 145 F2d 664 (1944).

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that a rehearing be granted and that upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Teddy W. Airhart, Jr.
Counsel for petitioner

William C. Bradley
Counsel for petitioner

Dated: Thursday, October 27, 1966

CERTIFICATE OF COUNSEL

We, Teddy W. Airhart, Jr. and William C. Bradley, attorneys for petitioner, Edward G. Partin, certify that a copy of the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

TEDDY W. AIRHART, JR.

WILLIAM C. BRADLEY

CERTIFICATE

We, Teddy W. Airhart, Jr. and William C. Bradley, attorneys for petitioner, Edward G. Partin, certify that a copy of the above and foregoing petition for rehearing has this date been served upon David L. McComb, Esq. for the General Counsel, Roy Maughan and J. H. Bankston, Esqs., Baton Rouge, Louisiana, attorneys for respondent, and Thurgood Marshall, Esq., Solicitor General, in care of the Department of Justice, Tenth and Constitution Avenue, Washington, D.C.

Baton Rouge, Louisiana, this, the 28th day of October, 1966.

TEDDY W. AIRHART, JR.

WILLIAM C. BRADLEY